

REMARKS

Claims 1-5, 7-11, 14-19, 23 and 24 are pending with entry of this paper.

Claims 1-5, 7-11, 14-19, 23 and 24 stand rejected.

Applicant would like to thank the Examiner for the courtesies shown to Applicant's representatives during the interview of April 10, 2008. The below remarks commemorate the substance of the interview.

Applicant acknowledges the withdrawal of the earlier rejections under 35 U.S.C. § 112, second paragraph.

Rejection under 35 U.S.C. § 103(a)**Claims 1-5, 11, 12, 16-18 and 24**

At pages 2-9, Claims 1-5, 11, 16-18 and 24 were improperly rejected as being unpatentable under 35 U.S.C. § 103(a) over Molne in view of Farber and Leivo. As discussed during the interview, it appears the Office overlooked the claim language distinguishing these claims from the cited references **and** mischaracterized what Molne, Farber and Leivo fairly disclose.

During the interview it became apparent that the Office overlooked and mischaracterized Applicant's claim language. As the Office is undoubtedly aware, during patent examination, the pending claims must be "given their broadest reasonable

interpretation consistent with the specification.” See MPEP §2111. In *Phillips*, the Federal Circuit explicitly enumerated this standard:

The Patent and Trademark Office (“PTO”) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction “*in light of the specification as it would be interpreted by one of ordinary skill in the art.*” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must “conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.”

415 F.3d. 1303, 1316 (Fed. Cir. 2005) (emphasis supplied). This broadest reasonable interpretation of the claims must be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359 (Fed. Cir. 1999). The Office’s “broadest reasonable interpretation” of Applicant’s claim language clearly was not in comport with Applicant’s specification.

Claim 1 is instructive in this instance and recites:

A software defined radio comprising:

- a plurality of *layered communication* schemes;
- a configuration system for selectively enabling one of *the plurality of layered communication schemes* comprising a processor, a smartcard reader and a memory;
- wherein a one of *the plurality of communication schemes* is selected and enabled by the processor based on configuration information from a user’s smartcard, and wherein said configuration information includes at least a security authorization, *and wherein the selection and enabling of the communication scheme is a function of the security status of the user.* (emphasis supplied).

Claim 1 as recited and emphasized above provides a software defined radio (“SDR”) which provides access to a plurality of layered communication schemes as a function of a authorization scheme. Thus, depending upon a user’s actual authorization, i.e., confidential, secret, etc., the user will be provided access to a specified layered communication scheme/protocol as a function of his/her security status. Independent Claims 11, 16 and 24 recite similar matter. As discussed in the interview and for the benefit of the Office, the specification describes at paragraphs [0038]-[0043] and illustrates in Figure 3 a high-level hierarchical model of a communications scheme (i.e., a layered communications scheme).

In the rejection, the Office improperly stated that Molne “discloses multimode/multihyperband mobile stations...which reads on the claimed, ‘software defined radio comprising: a plurality of communications schemes.’” Claim 1 recites, however, “a plurality of layered communications schemes.” Therefore, the Office failed to examine the proper claim language and, by definition, the substance of the Action is improper. This mistake becomes readily apparent as none of the recited references discuss, teach or suggest a layered communications scheme. For example, Molne discusses a plurality of communications schemes at Column 1, lines 30-34; however, none of these are described as possessing any layers, etc. as described by Applicant in its specification. Farber is equally unavailing to supplement these deficiencies as Farber too describes a plurality of communications schemes at Column 1, lines 56-60, but none of these are described as possessing any layers.

What is troubling, however, is the statement of the Action and the Office's insistence during the interview that Leivo teaches that "the selection and enabling of the communication scheme is a function of the security status of the user" while referencing Col. 8, line 57 to Col. 9, line 6 thereof. First, as the Office is undoubtedly aware, while this portion of Applicant's claim clearly recites "the communication scheme", the proper antecedent basis for the recited communication scheme is the layered communication scheme discussed above. Therefore, the Office's insistence during the interview that any communication scheme may properly provide support for a rejection is without merit. Further, the portion of Leivo referenced by the Office explicitly states:

An arrangement according to FIG. 3 also enables e.g. a speech-based service menu to be implemented e.g. for a blind or partially sighted user. Assume that the service device 33 is e.g. an on-line banking terminal. The user 1 inserts his or her bank or credit card into the card reader of the on-line banking terminal. The on-line banking terminal 33 communicates with the authentication server 4 either directly or e.g. via a main computer of the bank. The user 1 is authenticated on the basis of the information read from the card and he or she may also be required to enter a predetermined PIN code through the user interface of the banking terminal. On the basis of the identification information on the card, the user 1 is identified as a user with impaired vision, who, instead of the usual user interface of the banking terminal, uses his or her mobile telephone as the user interface.

Leivo, 8:32-47. While Leivo certainly discloses a certain type of authentication, there clearly is no disclosure of any selection and enabling of a layered communication scheme as a function of the security status of a user. Is it the Office's position that human voice as disclosed in Leivo above is a layered communication scheme? Further, how can the Office combine the teaching of voice access to a banking terminal/money machine with the teachings of Molne and/or Farber? During the interview, the Office took the position

that since Leivo discloses a cellular telephone and both Molne and Farber discuss the roaming of a cellular telephone between networks, the references must be combinable. This is incorrect and without support in the MPEP or law. The mere fact that two references share a device in common does not comport with Federal Circuit law regarding establishment of a *prima facie* case of obviousness.

As the Office is aware, to establish a *prima facie* case for obviousness, three (3) criteria must be met. First, there must be some suggestion or motivation, either in the cited prior art references or in the knowledge generally available to those of ordinary skill in the art, to modify the primary reference as the Office proposes. Second, there must be a reasonable expectation of success in connection with the Office's proposed combination of the references. Third, the prior art references must disclose or suggest all of the claimed limitations. *See* MPEP 2143. None of these elements were met in the Action or in the interview.

It is clear from the remarks above that the Office has failed to establish a *prima facie* case for obviousness because the Office failed to satisfy its burden of showing that the prior art discloses or suggests all of the claimed elements of independent Claims 1, 11, 16 and 24, failed to provide or enumerate a reasonable expectation of success regarding the combination of the cited references, and, as such, failed to satisfy its burden of showing that there is a suggestion or motivation to one of ordinary skill in the art to modify the primary reference as the Office proposes. Applicant respectfully requests reconsideration and withdrawal of the rejection of independent Claims 1, 11, 16 and 24.

Claims 2-5 and 17-18 are ultimately dependent upon independent Claims 1 and 16. Independent Claims 1 and 16 are in condition for allowance. By virtue of their dependency and without regard for the additional patentable limitations contained therein, reconsideration and withdrawal of the rejection of Claims 2-5 and 17-18 are hereby solicited.

Claims 7-10 and 14-15

At pages 9-12, Claims 7-10 and 14-15 were improperly rejected as being unpatentable under 35 U.S.C. § 103(a) over Molne in view of Farber, Ting and Leivo.

Claims 7-10 and 14-15 are dependent upon independent Claims 1 and 11. Claims 1 and 11 are in condition for allowance. Thus, the claims depending from independent Claims 1 and 11 are patentable at least by virtue of their dependence without need to resort to the additional patentable limitations contained therein. Reconsideration and withdrawal of the rejection of Claims 7-10 and 14-15 under 35 U.S.C. § 103(a) are hereby solicited.

Claims 19 and 23

At pages 13-14, Claims 19 and 23 were improperly rejected as being unpatentable under 35 U.S.C. § 103(a) over Molne in view of Ting and Leivo. The Office overlooked the claim language distinguishing these claims from the cited references and mischaracterized what Molne, Ting and Leivo fairly disclose.

Independent Claim 19 recites:

A software defined radio comprising a RF Section, a IF section and a baseband section, wherein the IF section and the baseband sections are programmable, a plurality of software modules containing programs for the IF section and the baseband section, the improvement comprising a smart card reader, wherein information retrieved by the smart card reader designates the respective programs for the IF section and the baseband section, ***and wherein said information is a function of service requirements, mission requirements and security status of a user.*** (emphasis supplied).

Again, the Office utilized Leivo to allegedly teach the above emphasized element referencing the same portions reproduced thereof. As discussed above, Applicant asserts that the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” This was not done by the Office. With reference to paragraphs [0011], [0013], [0018] and [0048] of Applicant’s published specification, Applicant discusses service requirements, mission requirements, etc. In contrast, there is no disclosure as to what the “information read from the card” or “identification information” may be in Leivo, and such silence cannot provide support for a *prima facie* case of obviousness. As this portion of Leivo is directed to access of a banking terminal, it would undoubtedly make sense that such “identification information” is the identification of the user such as name, social security number, etc. How can this identification information be “service requirements” or “mission requirements” as required by independent Claim 19? The Office, however, does not provide any analysis or evidence in the reference to support this bald conclusion.

It is again clear from the remarks above that the Office has failed to establish a *prima facie* case for obviousness because the Office failed to satisfy its burden of showing that the prior art discloses or suggests all of the claimed elements of independent Claim 19, and, as such, failed to satisfy its burden of showing that there is a suggestion or motivation to one of ordinary skill in the art to modify the primary reference as the Office proposes. Applicant respectfully requests reconsideration and withdrawal of the rejection of independent Claim 19.

Claim 23 is dependent upon independent Claim 19. Independent Claim 19 is in condition for allowance. By virtue of its dependency and without regard for the additional patentable limitations contained therein, reconsideration and withdrawal of the rejection of Claim 23 is hereby solicited.

